SUPREME COURT, U.S.
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No. 05-670

IN THE

Supreme Court of the United States

ROBERT BRUCE CRAFT,

Petitioner,

v.

CALVIN D. MORTON, Warden, and James Donald, COMMISSIONER OF THE GEORGIA DEPARTMENT OF CORRECTIONS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, in child pornography prosecutions, courts are required to perform independent examinations of whether material alleged to be child pornography is constitutionally protected speech.

2. Whether the category of speech unprotected by the First Amendment and subject to prosecution as child pornography is limited to pictures that are either objectively pornographic in themselves or the product of child abuse.

3. Whether the First Amendment protects defendants in child pornography prosecutions from conviction and punishment premised upon speculation about their private thoughts and fantasies.

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Dr. Robert Bruce Craft, the petitioner, respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The order of the United States Circuit Court of Appeals for the Eleventh Circuit denying a certificate of appealability (App. A), the order of the United States District Court for the Southern District of Georgia denying a COA (App. B), the order of the District Court adopting the report and recommendation of the Magistrate Judge (App. C), the Order of the Magistrate Judge (App. D), and the report and recommendation of the Magistrate Judge (App. E) were not officially reported.

The opinion of the Court of Appeals of Georgia is reported at *Craft v. State*, 252 Ga. App. 834, 558 S.E.2d 18 (2001) (App. F). The order denying reconsideration will not be officially reported. (App. G). The denial of certiorari by the Supreme Court of Georgia in *Craft v. State*, Case number S02C0654, has not been officially reported, but may be found at 2002 Ga. LEXIS 418 (App. H). The denial of reconsideration from denial of certiorari will not be officially reported. (App. I). The trial court entered no published opinions in *State v. Craft*, Richmond County Superior Court Indictment Number 99-RCCR-50, Columbia County Superior Court Indictment Number 99-CR-931 (consolidated by consent).

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals of Georgia was entered on November 9, 2001. The Georgia Court of Appeals denied a timely motion for reconsideration on December 10,

2001. The Supreme Court of Georgia denied timely cross-petitions for certiorari from both parties, by a vote of four to three, on May 13, 2002. The Georgia Supreme Court denied Craft's timely motion for reconsideration, by the same vote, on June 7, 2002. This Court denied Craft's timely petition for certiorari on November 12, 2002.

Craft filed a petition for habeas corpus in the United States District Court for the Southern District of Georgia on September 19, 2003. A Magistrate Judge recommended denial of Craft's habeas petition on December 8, 2004. Rejecting Craft's timely objections, the District Court adopted the Magistrate Judge's report and recommendation and denied the petition on March 15, 2005. The District Court denied Craft's timely motion to alter and amend and his timely application for a certificate of appealability on April 20, 2005 and June 28, 2005, respectively. The United States Court of Appeals for the Eleventh Circuit denied his timely application for a certificate of appealability on August 24, 2005.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1). This Court has jurisdiction under §1254 (1) to review denials of applications for certificates of appealability. *Hohn v. United States*, 524 U.S. 236 (1998).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides, in relevant part, "Congress shall make no law . . . abridging freedom of speech. . . ."

The Fifth Amendment to the Constitution of the United States provides, in relevant part, "No person shall . . . be deprived of life, liberty or property without due process of law. . . ."